

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DONNA CHIAMPI, : HONORABLE JOSEPH E. IRENAS  
Plaintiff, : CIVIL ACTION NO. 05-3395 (JEI)  
v. :  
BALLY'S PARK PLACE, INC. :  
d/b/a BALLY'S HOTEL :  
AND CASINO, and CAESAR'S :  
ENTERTAINMENT, INC. :  
Defendant. :  
:

**OPINION**

**APPEARANCES:**

ROBERT PAUL WEINER  
Society Hill Office Park  
Suite 4  
1874 Route 70 East  
Cherry Hill, NJ 08003  
Counsel for Plaintiff

COOPER LEVISON APRIL NIEDELMAN & WAGENHEIM, P.A.  
By: Joel M. Chipkin  
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Atlantic City, NJ 08401-4891  
Counsel for Defendant Bally's Park Place, Inc. d/b/a Bally's  
Hotel and Casino

**IRENAS**, Senior District Judge:

Plaintiff commenced this personal injury action in this Court on July 6, 2005, asserting diversity jurisdiction. Defendant moved to dismiss on July 26, 2006, arguing that the Court should abstain from adjudicating this case to avoid duplicative litigation. For the reasons stated below, Defendant's motion will be granted.

I.

On or about July 8, 2003, Plaintiff stayed at Bally's Hotel and Casino, located at Park Place and Boardwalk, Atlantic City, New Jersey. (Compl. ¶¶ 5-7). Shortly after checking into her room, Plaintiff slipped and fell in the bathroom. (*Id.* at ¶ 8). Plaintiff claims that the fall caused various injuries, and that Defendants are responsible.<sup>1</sup> (*Id.* at ¶¶ 10-12).

On July 6, 2005, Plaintiff commenced this action in this Court. Plaintiff also commenced another suit on July 5, 2005, in the Superior Court of New Jersey, Atlantic County. (Pl. Br. at p. 1). Plaintiff admits that "[t]he parties and the allegations in the two different law suits are identical." (*Id.*). She explains that she instituted the suit in the state court to toll the statute of limitations in the event that the federal action was dismissed.<sup>2</sup> (*Id.* at pp. 1-2).

II.

Abstention is a judicially created doctrine that permits a federal court to abstain from accepting jurisdiction over a

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<sup>1</sup> The docket indicates that process was never served on Defendant Caesar's Entertainment, Inc.

<sup>2</sup> Plaintiff claims that she offered to withdraw the suit pending in the state court if Defendant would consent to allow the matter to proceed in this Court. Defendant rejected this offer. The Court notes that the parties cannot confer subject matter jurisdiction on the Court by consent. *In re Combustion Engineering, Inc.*, 391 F.3d 190, 228 (3d Cir. 2004).

matter when a parallel state proceeding addresses the same matter. See *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). "Abstention from the exercise of federal jurisdiction is the exception, not the rule." *Id.* Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest. *Id.*; see also *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188-89 (1959).

Under the abstention doctrine articulated in *Colorado River*, federal courts must consider the principles regarding federal-state relations which govern in situations involving the contemporaneous exercise of concurrent jurisdictions. 424 U.S. at 817. These principles rest on considerations of "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.* (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183 (1952)).

The *Colorado River* Court cited six factors in determining whether abstention is appropriate: (1) which court first assumed jurisdiction over property that is the subject of litigation; (2) the convenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained by the concurrent forum; (5) whether,

and to what extent, federal law provides the rules of decision on the merits; and (6) the adequacy of the state proceeding in protecting the rights invoking federal jurisdiction. See *Colorado River*, 424 U.S. at 818-19. "No one factor is necessarily determinative; a carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors [counseling] against that exercise is required." *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 15 (1983).

In this case, the factors weigh heavily in favor of abstention.<sup>3</sup> The first factor is irrelevant since neither court in this case asserted jurisdiction over any property. The second factor weighs in favor of abstention. Atlantic City is where the accident occurred, and where Defendant and the witnesses are located. While Plaintiff claims that she must travel further to reach Atlantic City (175 miles compared to 117 miles), no party, no witness, and no evidence is located in Camden County. Atlantic City, overall, is more convenient than Camden.

The third factor also weighs in favor of abstention.

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<sup>3</sup> To apply the *Colorado River* abstention doctrine, the Court must first establish that the matters are parallel. *University of Maryland v. Peat Marwick Main & Co.*, 923 F.2d 265, 276 n.16 (3d Cir. 1991). Two proceedings are parallel if they involve substantially the same parties litigating the same issues in two separate forums. *Ryan v. Johnson*, 115 F.3d 193, 196 (3d Cir. 1997).

Here, Plaintiff candidly admits that the parties and the allegations in the two different law suits are identical.

Litigating the same claim in two separate forums is a waste of judicial resources, and will undermine the goal of "wise judicial administration" envisioned by the *Colorado River* Court.

The fourth factor examines the order in which each forum asserted jurisdiction over the matter. Here, the Supreme Court cautions that "priority should not be measured exclusively by which complaint was filed first, but rather in terms of how much progress has been made in the two actions." *Moses H. Cone Memorial Hosp.*, 460 U.S. at 21.

Defendant began discovery in the state suit immediately after Plaintiff commenced it by noticing depositions, serving and answering discovery, assembling medical records and documents, and filing motions. By contrast, the only action that was taken in this Court was the filing of pleadings and the motion to dismiss. Plaintiff does not dispute this, but simply argues that all discovery materials of the state proceeding could also be used in this Court. However, because it is clear that the state suit has already proceeded much further, factor four weighs in favor of abstention.

The fifth factor decisively weighs in favor of abstention. The case involves personal injury, and New Jersey substantive law applies. No federal interest is implicated.

Finally, the sixth factor does not weigh against abstention. Plaintiff argues that because Defendant employs many hundreds of Atlantic City's residents and is well known in the area, the

potential jury pool may disfavor Plaintiff. However, Plaintiff did not offer any evidence beyond mere speculation to support this contention. In the absence of proof, the Court will not accept the suggestion that the Superior Court of New Jersey in Atlantic County will not adequately protect Plaintiff's rights.

**III.**

For the reasons stated above, Defendant's motion to dismiss will be granted. The Court will issue an appropriate order.

Date: February 7, 2007

s/Joseph E. Irenas  
JOSEPH E. IRENAS, S.U.S.D.J.